FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6212 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Coram, : Court's or Judge's Orders

Mr. Prafulla Shah i/b I.R. Kulkarni for petitioner

Ms. Nita Karnik h/f R. P. Mydholkar for R

CORAM: SMT. RANJANA DESAI, J.
30/9/2005

P.C.:-

The petitioners are plaintiffs and the respondents are defendants in R.C.S. No. 247/02. R.C.S. No. 1064/1995 was filed against the respondents for injunction restraining them from disturbing the possession of the petitioners. This suit was filed in the court of Civil Judge (S.D.) Thane on 26/11/96. It was disposed of in terms of consent terms. The respondents filed Regular Darkhast No. 16/99 in the court of Joint Civil Judge, (J.D.) Thane on 17/2/99.

2. On 15/3/02 the judgment debtor was directed to give possession within three months. The petitioners then filed R.C.S. No. 247/02 in the court of Civil Judge, (J.D.) Thane for a declaration that the decree passed in R.C.S. No. 1064/95 on 26/11/96 and Regular Darkhast No. 16/99 and order dated 15/3/02 passed therein is null and void, illegal and not executable.

3. It appears that by virtue of general order of transfer of cases issued by the Registrar General, High Court, Bombay under letter dated 14/1/2004 R.C.S. No. 247 of 2002 stood transferred from Joint Civil Judge, (Jr.Division) to Second Joint Civil Judge, (Sr.Division) Thane.

4. On 14/7/05 the petitioners filed M.A. No. 160/05 in District Court Thane under Section 24 of the Code of Civil Procedure for transfer of R.C.S. No. 247/02 from the court of Civil Judge, S.D. to the court of Joint Civil Judge, J.D. where

Darkhast is pending. On 18/7/05 Joint District Judge, Thane ordered that Regular Civil Suit No. 247/02 stands transferred to the court of Joint Civil Judge, J.D. from the court of II Jt. Civil Judge, S.D. It is an admitted position that the other side was not heard when this order was passed. It is also an admitted position that this order was not challenged by the respondents herein.

5. It appears that the petitioners preferred adjournment application in the court of Joint Civil Judge, Senior Division in R.C.S. No. 247 of 2002 stating that R.C.S. No. 247 of 2002 is transferred to Joint Civil Judge, J.D. Thane and, therefore, the suit may be adjourned.

6. On 12/8/05, the Civil Judge, S.D. passed the following order:

. "Read the application and showed the order of Hon’ble DJ, Thane, bearing No. Reg. 2348/6457 Dist Court Thane dated 05/08/2005 keeping

the file with this Court read the application and say heard Advocate for the both sides in the application. Advocate for defendant submitted that, if there is any administrative order defendant want to challange it the application for adjournment is granted."

7. In this petition the petitioners have prayed that the order passed by the District Judge, Thane dated 5/8/2005 referred to by the Civil Judge, Senior Division, Thane, in his order dated 12/8/05 be set aside as it is illegal.

8. I have heard the learned counsel appearing for both sides.

9. As earlier noted by me order dated 18/7/05 passed by Jt. District Judge, Thane transferring civil suit NO. 247/02 to the court of Jt. Civil Judge, J.D. from the court of Jt. Civil Judge,S.D. is passed without hearing the other side. It is an order passed on an application made by

the petitioners under Section 24 of the Code of Civil Procedure. Though it is not challenged by the respondents since it is passed without hearing the other side, it is a void order. It deserves to be set aside so as to secure justice to both sides.

10. Similarly District Judge, Thane has passed order dated 5/8/05 without issuing notice to the other side and consequently without hearing other side. In my opinion, if the District Judge were to act suo motu no notice to the other side was required. If the order of transfer is to be passed in a judicial proceeding on the basis of application filed by some other party or even on administrative side on the basis of application filed by some other party then notice to the other side is a must. Though order dated 5/8/2005 is passed on administrative side it is passed on the complaint made by the petitioner and hence notice to the respondents was a must. Therefore, order dated 5/8/2005 will also have to be set

aside.

11. In my opinion, therefore, in the circumstances of the case, the following order should meet the ends of justice;

(a) The order dated 18/7/2005 passed by the Jt. District Judge, Thane, transferring R.C.S. No. 247 of 2002 and the order dated 5/8/05 passed by the District Judge, Thane referring R.C.S. No. 247 of 2002 on the file of Jt. Civil Judge, S.D. Thane are set aside.

(b) The District Judge Thane shall consider afresh M.A. No. 160/05 dated 14/7/05 filed by the petitioners along with complaint dated 5/8/05 filed by the respondents after hearing both sides and in accordance with law.

(c) I must make it clear that I have not expressed any opinion on the rival contentions and the District Judge Thane, shall pass such order as he deems fit independently. I may

only express that it will be in the interest of both sides to ensure that the pending proceedings are disposed of at the earliest.

d) The District Judge shall decide the matters within a period of one month from the date of receipt of this order by him. Till such time as the District Judge disposes of the said application and the said complaint, the parties shall maintain status quo. However, the order of status quo shall not give rise to any rights in favour of either side.

12. Petition is disposed of.